

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed November 5, 2003. In order to advance prosecution of this case, Applicant amends Claim 32. Applicant respectfully requests reconsideration and favorable action in this case.

Allowable Subject Matter

Applicant notes with appreciation the Examiner's indication that Claims 5, 7, 11, 13, 14, 18, 21, 22, 25, 28, 31, 37, and 39 would be allowable if rewritten in independent form.

Section 112 Rejections

The Examiner rejects Claims 32-34 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amends Claim 32, from which Claims 33 and 34 depend, to address the rejection. As the Examiner correctly identified, the alleged indefiniteness is the result of a typographical error in the Application. Thus, Applicant submits that the amendment to Claim 32 does not substantively change the scope of any of Claims 32-34. Applicant respectfully requests reconsideration and allowance of Claims 32-34.

Section 102 Rejections

The Examiner rejects Claims 16-17, 19, 23, 27, and 29-30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,893,305 issued to Fernandez et al. ("*Fernandez*"). Claim 16 recites:

A method for verifying spectral compatibility of a communication system that utilizes at least one digital subscriber line protocol, comprising:

coupling a digital subscriber line access multiplexer to a spectral management channel; and

transmitting a spectral management message over the spectral management channel, the spectral management message comprising information related to a training of a digital subscriber line modem by a carrier.

Fernandez fails to disclose, either expressly or inherently, every element of Claim 16. *Fernandez* discloses a system for allocating unused bandwidth from a donor port to a recipient port. Col. 3, ll. 5-10. *Fernandez* however does not disclose "transmitting a spectral management message over the spectral management channel, the spectral management message comprising information related to a training of a digital subscriber line modem." The section of *Fernandez* cited by the Examiner only discloses a handshake after the completion of idle bandwidth allocation. Col. 6, ll. 19-22, 39-41. The handshake does not include "information related to a training of [the] digital subscriber line modem" as recited by Claim 16.

As a result, *Fernandez* does not recite, either expressly or inherently, every element of Claim 16. Claim 16 is thus allowable for at least this reason. Applicant respectfully requests reconsideration and allowance of Claim 16 and its dependents.

Although of differing scope from Claim 16, Claims 23 and 29 include elements that, for reasons substantially similar to

those discussed above with respect to Claim 16, are not disclosed, expressly or inherently, by *Fernandez*. Claims 23 and 29 are thus allowable for at least this reason. Applicant respectfully requests reconsideration and allowance of Claims 23 and 29, and their respective dependents.

Section 103 Rejections

The Examiner rejects Claims 1-4 under 35 U.S.C. § 103(a) as being unpatentable over *Fernandez* in view of U.S. Patent No. 6,304,578 issued to Fluss ("*Fluss*"). Claim 1 recites:

A system for verifying spectral compatibility of a communication system that utilizes at least one digital subscriber line protocol, comprising:

a plurality of digital subscriber line access multiplexers; and

a communications channel coupling the plurality of digital subscriber line access multiplexers, each digital subscriber line access multiplexer operable to transmit and receive at least one message over the communications channel, the message comprising information related to a training of a digital subscriber line modem by a carrier.

Fernandez fails to disclose, teach, or suggest every element of Claim 1. As noted above, *Fernandez* discloses a system for allocating unused bandwidth from a donor port to a recipient port. Col. 3, ll. 5-10. *Fernandez*, however, does not make any reference to "training" or "information related to training[.]" The section of *Fernandez* cited by the Examiner only discloses a handshake after the completion of idle bandwidth allocation. Col. 6, ll. 19-22, 39-41. Thus, *Fernandez* does not disclose, teach, or suggest any multiplexers operable to "to transmit and receive at least one message over the communications channel, the message comprising information related to a training of a digital subscriber line modem by a carrier" as recited by Claim 1.

Combination with *Fluss* does not remedy this omission. *Fluss* teaches a headend of a shared data channel which buffers data packets to minimize the effects of packet latency. Col. 3, ll. 18-28. *Fluss* discloses "packets for setting up or tearing down connections." Col. 7, line 28. *Fluss*, however, does not discuss training of any type, much less "information

related to a training of a digital subscriber line modem by a carrier." As a result, *Fluss* does not disclose, teach, or suggest digital subscriber line access multiplexers operable to "transmit and receive at least one message over the communications channel, the message comprising information related to a training of a digital subscriber line modem by a carrier." Thus, *Fernandez* and *Fluss*, both alone and in combination, fail to disclose, teach, or suggest every element of Claim 1.

Additionally, Applicant respectfully notes that, to establish a prima facie case of obviousness, the Examiner must identify within the references some suggestion or motivation to combine the references. M.P.E.P. § 2143. Applicant respectfully asserts that the Examiner provides no such suggestion or motivation. With respect to the proposed combination, the Examiner states only that:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the dynamic port allocation system of *Fernandez* in the xDSL network of *Fluss*. One of ordinary skill in the art would have been motivated to do so in order to realize increased system efficiency in a DSL network.

Office Action, p. 5.

These conclusory statements however identify no motivation or suggestion within the references to combine the references as required by M.P.E.P. § 2143 and amount to hindsight reconstruction of Claim 1. The Examiner's determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed combination is not sufficient to establish obviousness. See *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988).

Furthermore, not only do *Fernandez* and *Fluss* fail to motivate or suggest the proposed modification as required, the references, in fact, teach away from such a modification. *Fernandez* teaches communication between a master modem 10 and a slave modem 12. Col. 4, ll. 29-32. By contrast, *Fluss* teaches an Ethernet hub 204, which connects to a plurality of digital line subscriber access multiplexers (DSLAMs). Col. 5, lines 17-21. Thus, the references discuss communication between dissimilar types of components. As a result, the references teach away from the proposed combination, and combination of *Fernandez* and *Fluss* is improper.

Therefore, *Fernandez* and *Fluss*, both alone and in combination, fail to disclose, teach, or suggest every element of Claim 1. Additionally, combination of the two references is improper. Claim 1 is thus allowable for at least these reasons. Applicant respectfully requests reconsideration and allowance of Claim 1 and its dependents.

The Examiner rejects Claims 20, 24, 26, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Fernandez* in view of U.S. Patent No. 6,246,754 issued to Cole et al. ("*Cole*"). Claim 20 depends from Claim 16, which has been shown above to be allowable. Claim 20 is thus allowable for at least this reason. Claims 24 and 26 depend from Claim 23, which has been shown above to be allowable. Claims 24 and 26 are thus allowable for at least this reason. Claim 32 depends from Claim 29 which has been shown above to be allowable. Claim 32 is thus allowable for at least this reason. Applicant respectfully requests reconsideration and allowance of Claims 20, 24, 26, and 32.

The Examiner rejects Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over *Fernandez* in view of *Fluss* and *Cole*. Claim 6 depends from Claim 1, which has been shown above to be

allowable. Claim 6 is thus allowable for at least this reason. Applicant respectfully requests reconsideration and allowance of Claim 6.

The Examiner rejects Claims 8-10, 12, 15, 35-36, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Cole* in view of U.S. Patent No. U.S. Patent No. 6,343,077 issued to *Chin*. Although of differing scope from Claim 1, Claims 8 and 35 include elements that, for reasons substantially similar to those discussed above with respect to Claim 1, are not disclosed, taught, or suggested by the cited references. Claims 8 and 35 are thus allowable for at least these reasons. Applicants respectfully request reconsideration and allowance of Claims 8 and 35, and their respective dependents.

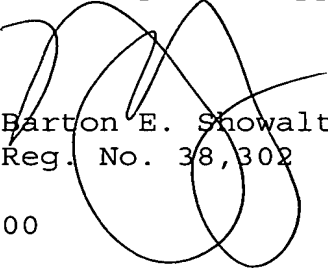
Conclusions

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believes that no fees are due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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